



February 21, 2007

SENATE BILL No. 573

DIGEST OF SB 573 (Updated February 20, 2007 12:48 pm - DI 106)

Citations Affected: IC 11-8; IC 11-11; IC 35-43; noncode.

Synopsis: Seizure of inmate trust funds. Permits the department of correction to freeze all or a portion of an inmate's account while investigating whether an inmate has committed inmate fraud or while a criminal case involving inmate fraud is pending against the inmate. Requires the department to return money in the inmate's account to the rightful owner if the inmate is convicted, and specifies that the money will be deposited in the victim of violent crimes compensation fund if the rightful owner cannot be located. Provides that an inmate who, with the intent of obtaining money or property from the person, makes a misrepresentation to a person who is not an inmate commits inmate fraud, a Class C felony.

Effective: July 1, 2007.

Steele, Waterman

January 23, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 20, 2007, amended, reported favorably — Do Pass.

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SB 573—LS 7611/DI 106+



February 21, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 573

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-5-2, AS AMENDED BY P.L.173-2006,
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 2. (a) The department may, under IC 4-22-2,
4 classify as confidential the following personal information maintained
5 on a person who has been committed to the department or who has
6 received correctional services from the department:

7 (1) Medical, psychiatric, or psychological data or opinion which
8 might adversely affect that person's emotional well-being.

9 (2) Information relating to a pending investigation of alleged
10 criminal activity or other misconduct.

11 (3) Information which, if disclosed, might result in physical harm
12 to that person or other persons.

13 (4) Sources of information obtained only upon a promise of
14 confidentiality.

15 (5) Information required by law or promulgated rule to be
16 maintained as confidential.

17 (b) The department may deny the person about whom the

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information pertains and other persons access to information classified as confidential under subsection (a). However, confidential information shall be disclosed:

- (1) upon the order of a court;
- (2) to employees of the department who need the information in the performance of their lawful duties;
- (3) to other agencies in accord with IC 4-1-6-2(m) and IC 4-1-6-8.5;
- (4) to the governor or the governor's designee;
- (5) for research purposes in accord with IC 4-1-6-8.6(b);
- (6) to the department of correction ombudsman bureau in accord with IC 11-11-1.5; ~~or~~
- (7) **to a person who is or may be the victim of inmate fraud (IC 35-43-5-20); or**
- (8) if the commissioner determines there exists a compelling public interest as defined in IC 4-1-6-1, for disclosure which overrides the interest to be served by nondisclosure.

(c) The department shall disclose information classified as confidential under subsection (a)(1) to a physician, psychiatrist, or psychologist designated in writing by the person about whom the information pertains.

(d) The department may disclose confidential information to the following:

- (1) A provider of sex offender management, treatment, or programming.
- (2) A provider of mental health services.
- (3) Any other service provider working with the department to assist in the successful return of an offender to the community following the offender's release from incarceration.

(e) This subsection does not prohibit the department from sharing information available on the Indiana sex offender registry with another person.

SECTION 2. IC 11-11-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter:

"Contraband" means property the possession of which is in violation of an Indiana or federal statute.

"Prohibited property" means property other than contraband that the department does not permit a confined person to possess. **The term includes money in a confined person's account that derives from inmate fraud (IC 35-43-5-20).**

SECTION 3. IC 11-11-2-4 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) When the department seizes property, it shall give the affected person written notice of the seizure. This notice must include the date of the seizure, the property seized, the name of the person who seized the property, the reason for the seizure, and the fact that the department's action may be challenged through the grievance procedure.

(b) When the department seizes property of a confined person that it later determines is neither contraband nor prohibited property, it shall return the property to that person or make such other reasonable disposition as directed by that person.

(c) Except as provided in subsection (d) **or section 6 of this chapter**, when the department seizes prohibited property, it shall forward the property to a person or address designated by the confined person or make any other reasonable disposition.

(d) Money seized as prohibited property shall be deposited in the inmate recreation fund of that institution established under IC 4-24-6-6.

SECTION 4. IC 11-11-2-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6. (a) This section applies if the department has reasonable suspicion that money in a confined person's account derives from the commission of inmate fraud (IC 35-43-5-20).**

(b) If the department has reasonable suspicion that money in a confined person's account derives from the commission of inmate fraud, the department may freeze all or a part of the confined person's account for not more than one hundred eighty (180) days while the department conducts an investigation to determine whether the money in the confined person's account derives from inmate fraud. If the department freezes the account of a confined person under this subsection, the department shall notify the confined person in writing.

(c) If the department's investigation reveals that the money in the confined person's account does not derive from inmate fraud, the department shall unfreeze the account at the conclusion of the investigation.

(d) If the department's investigation reveals that the money in the confined person's account may derive from the commission of inmate fraud, the department shall notify the prosecuting attorney of the results of the department's investigation.

(e) If the prosecuting attorney charges the confined person with inmate fraud, the department shall freeze the confined person's account until the case reaches final judgment.

(f) If the prosecuting attorney does not charge the confined

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1 person with inmate fraud, or if the confined person is acquitted of
 2 the charge of inmate fraud, the department shall unfreeze the
 3 confined person's account.

4 (g) If the confined person is convicted, the department, in
 5 consultation with the prosecuting attorney, shall locate and return
 6 the money to the rightful owner.

7 (h) If, after the elapse of ninety (90) days after the date of a
 8 confined person's conviction, the department is unable to locate
 9 and return the money to the rightful owner, the department shall
 10 deposit the money in the violent crime victim's compensation fund
 11 under IC 5-2-6.1-40.

12 SECTION 5. IC 35-43-5-20 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2007]: **Sec. 20. (a) As used in this section, "inmate" means a**
 15 **person who is confined in:**

16 (1) the custody of:

17 (A) the department of correction; or

18 (B) a sheriff;

19 (2) a county jail; or

20 (3) a secure juvenile facility.

21 (b) An inmate who, with the intent of obtaining money or other
 22 property from a person who is not an inmate:

23 (1) makes a misrepresentation to a person who is not an
 24 inmate; and

25 (2) obtains money or other property from the person who is
 26 not an inmate;

27 commits inmate fraud, a Class C felony.

28 SECTION 6. [EFFECTIVE JULY 1, 2007] IC 35-43-5-20, as
 29 added by this act, applies only to crimes committed after June 30,
 30 2007.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 573, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 11-8-5-2, AS AMENDED BY P.L.173-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) The department may, under IC 4-22-2, classify as confidential the following personal information maintained on a person who has been committed to the department or who has received correctional services from the department:

- (1) Medical, psychiatric, or psychological data or opinion which might adversely affect that person's emotional well-being.
- (2) Information relating to a pending investigation of alleged criminal activity or other misconduct.
- (3) Information which, if disclosed, might result in physical harm to that person or other persons.
- (4) Sources of information obtained only upon a promise of confidentiality.
- (5) Information required by law or promulgated rule to be maintained as confidential.

(b) The department may deny the person about whom the information pertains and other persons access to information classified as confidential under subsection (a). However, confidential information shall be disclosed:

- (1) upon the order of a court;
- (2) to employees of the department who need the information in the performance of their lawful duties;
- (3) to other agencies in accord with IC 4-1-6-2(m) and IC 4-1-6-8.5;
- (4) to the governor or the governor's designee;
- (5) for research purposes in accord with IC 4-1-6-8.6(b);
- (6) to the department of correction ombudsman bureau in accord with IC 11-11-1.5; or
- (7) to a person who is or may be the victim of inmate fraud (IC 35-43-5-20); or**
- (8) if the commissioner determines there exists a compelling public interest as defined in IC 4-1-6-1, for disclosure which overrides the interest to be served by nondisclosure.**

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(c) The department shall disclose information classified as confidential under subsection (a)(1) to a physician, psychiatrist, or psychologist designated in writing by the person about whom the information pertains.

(d) The department may disclose confidential information to the following:

(1) A provider of sex offender management, treatment, or programming.

(2) A provider of mental health services.

(3) Any other service provider working with the department to assist in the successful return of an offender to the community following the offender's release from incarceration.

(e) This subsection does not prohibit the department from sharing information available on the Indiana sex offender registry with another person."

Page 1, line 8, after "from" insert "**inmate fraud (IC 35-43-5-20)**".

Page 1, delete lines 9 through 10.

Page 2, line 5, after "(d)" delete "," and insert "**or section 6 of this chapter,**".

Page 2, line 9, delete "disposed of as".

Page 2, delete lines 10 through 11.

Page 2, run in lines 9 through 13.

Page 2, delete lines 14 through 21.

Page 2, line 24, delete "If the department determines that money in the" and insert "**This section applies if the department has reasonable suspicion that money in a confined person's account derives from the commission of inmate fraud (IC 35-43-5-20)**".

(b) If the department has reasonable suspicion that money in a confined person's account derives from the commission of inmate fraud, the department may freeze all or a part of the confined person's account for not more than one hundred eighty (180) days while the department conducts an investigation to determine whether the money in the confined person's account derives from inmate fraud. If the department freezes the account of a confined person under this subsection, the department shall notify the confined person in writing.

(c) If the department's investigation reveals that the money in the confined person's account does not derive from inmate fraud, the department shall unfreeze the account at the conclusion of the investigation.

(d) If the department's investigation reveals that the money in the confined person's account may derive from the commission of

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inmate fraud, the department shall notify the prosecuting attorney of the results of the department's investigation.

(e) If the prosecuting attorney charges the confined person with inmate fraud, the department shall freeze the confined person's account until the case reaches final judgment.

(f) If the prosecuting attorney does not charge the confined person with inmate fraud, or if the confined person is acquitted of the charge of inmate fraud, the department shall unfreeze the confined person's account.

(g) If the confined person is convicted, the department, in consultation with the prosecuting attorney, shall locate and return the money to the rightful owner.

(h) If, after the elapse of ninety (90) days after the date of a confined person's conviction, the department is unable to locate and return the money to the rightful owner, the department shall deposit the money in the violent crime victim's compensation fund under IC 5-2-6.1-40.

SECTION 5. IC 35-43-5-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 20. (a) As used in this section, "inmate" means a person who is confined in:

- (1) the custody of:
 - (A) the department of correction; or
 - (B) a sheriff;
- (2) a county jail; or
- (3) a secure juvenile facility.

(b) An inmate who, with the intent of obtaining money or other property from a person who is not an inmate:

- (1) makes a misrepresentation to a person who is not an inmate; and
- (2) obtains money or other property from the person who is not an inmate;

commits inmate fraud, a Class C felony.

SECTION 6. [EFFECTIVE JULY 1, 2007] IC 35-43-5-20, as added by this act, applies only to crimes committed after June 30, 2007."

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Page 2, delete lines 25 through 33.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 573 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 0.

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